

Remarks

Claims 22-29 and 43-66 are pending in the subject application. By this Amendment, Applicants have canceled claims 28, 54 and 64 and amended claims 22, 43-47, 48 and 62. Support for the amendments can be found throughout the subject specification and in the claims as originally filed (see previously pending claims 28, 54 and 64). Entry and consideration of the amendments presented herein is respectfully requested. Accordingly, claims 22-27, 29, 43-53, 55-63, 65 and 66 are currently before the Examiner and claims 22, 23, 27, 29, 48, 49, 53, 55, 61, 62, 63, and 65-66 read on the elected species. Favorable consideration of the pending claims is respectfully requested.

Claims 22, 23, 48, 49 and 62 are rejected under 35 U.S.C. § 102(b) as anticipated by Gould *et al.* (U.S. Patent No. 4,676,985). The Office Action states that Gould *et al.* teach that bergamot is applied to underground portions of plants, which are in contact with the soil. Therefore, it is inherent that the bergamot would come in contact with the soil once applied to the underground portions of the plants. The Office Action indicates that the claims do not require the bergamot or *Monarda* spp. to be in dry form. Applicants respectfully assert that the Gould *et al.* patent does not anticipate the claimed invention and that the claims require the application of dried bioactive herbage to the oil or growing material. Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. § 102(b) is respectfully requested.

Claims 22, 23, 28, 48, 49, 54, 61, 64 and 66 are rejected under 35 U.S.C. § 103(a) as obvious over Gould *et al.* (U.S. Patent No. 4,676,985). The Office Action maintains that Gould *et al.*'s liquid extract of *Monarda* makes the instant dry/solid form of *Monarda* obvious. The Office Action claims that Gould *et al.* teach that bergamot extract is *Monarda*; however Gould *et al.* do not teach additional ingredients in the bergamot extract. Applicants respectfully assert that the claimed invention is not obvious over the cited patent.

As noted in the Office Action, Gould *et al.* teach the use of liquid extracts of *Monarda* for the control of insect pests. The Office Action then asserts that the use of the liquid extract renders the use of dry/solid forms of *Monarda* obvious for the same purpose. Applicants respectfully disagree and note that Gould *et al.* contain no teaching related to the control of weeds or fungal pests. Additionally, Gould *et al.* teach the preparation of an extract that is a liquid and that is obtained by grinding plant material and then extracting liquid via the use of a hydrolytic press (column 2, lines

20-30). The extraction of the liquid as taught in Gould *et al.* would have been expected to concentrate active ingredients; thus, it is unclear that one skilled in the art would have had a reasonable expectation of success in using dried bioactive herbage for the control of weeds, fungal pathogens or plant pests since the concentration of any active ingredient within the plants from which Gould *et al.* extracted the liquid would have been far more concentrated than present in dried bioactive herbage.

Applicants further submit that Gould *et al.* fail to render the use of dried bioactive herbage for the control of weeds or fungal pathogens obvious. While Gould *et al.* teach that a liquid concentrate obtained from Monarda could be used for protecting seed from insect pests, the reference is devoid of any teachings related to the use of such extracts for the control of weeds or fungal pathogens. As the Patent Office is aware, an obviousness rejection fails if the prior art relied on does not disclose all of the limitations of the claimed invention. *See, e.g., In re Zurko*, 258 F.3d 1379, 1385-86 (Fed. Cir. 2001). Thus, obviousness requires a teaching or suggestion of all limitations in a claim. *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (citing *In re Royka*, 490 F.2d 981, 985 (C.C.P.A. 1974)). Since Gould *et al.* fail to provide any teaching related to the use of Monarda extracts for the control of weeds or fungal pathogens, the claimed invention is not obvious over the cited reference since each of the limitations of the claims (e.g., claims 22 and 48 and the claims dependent therefrom) are not taught by the reference.

Applicants further submit that the claims are not obvious over the teachings of Gould *et al.* As noted above, Gould *et al.* teach the use of a liquid extract for the control of plant pests. Gould *et al.* coat seeds with the liquid extract and do not incorporate the liquid extract into the soil or growing media as is recited in the claims. It is unclear how or why one skilled in the art would have extended the teachings of Gould *et al.* to include the use of the extracts disclosed in the reference for the control of fungal pathogens and weeds. Particularly, weeds and fungal pathogens are structurally different from insect plant pests and are classified in separate kingdoms (*i.e.*, Kingdom *Plantae*, Kingdom *Animalia* and Kingdom *Fungi*). Thus, it is clear that significant differences between the structure and biological function of fungi, weeds and insects exist and no basis (articulated reasoning) as to why one skilled in the art would have expected the liquid extract of Gould *et al.* to

control weeds or fungal pests has been presented in any Office Action. Accordingly, reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a) is respectfully requested.

It should be understood that the amendments presented herein have been made solely to expedite prosecution of the subject application to completion and should not be construed as an indication of Applicants' agreement with or acquiescence in the Examiner's position. Applicants expressly reserve the right to pursue the invention(s) disclosed in the subject application, including any subject matter canceled or not pursued during prosecution of the subject application, in a related application.

In view of the foregoing remarks and amendments to the claims, Applicants believe that the currently pending claims are in condition for allowance, and such action is respectfully requested.

The Commissioner is hereby authorized to charge any fees under 37 CFR §§1.16 or 1.17 as required by this paper to Deposit Account No. 19-0065.

Applicants invite the Examiner to call the undersigned if clarification is needed on any of this response, or if the Examiner believes a telephonic interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,



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